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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CECILIA LINARES, an Individual and
ABEL GONZALEZ, an Individual, On
Behalf of Themselves and All Other Similarly
Situated California Residents,

Plaintiff,

v.

COSTCO WHOLESALE, INC., a
Washington corporation,

Defendant.

Case No.: 3:11-cv-02547-MMA-RBB

CLASS ACTION

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. VIOLATION OF THE UNFAIR
COMPETITION LAW, Business and
Professions Code §17200 *et seq.*;
2. VIOLATION OF CONSUMERS
LEGAL REMEDIES ACT, Civil Code
§1750 *et seq.*; and
3. BREACH OF EXPRESS WARRANTY.

DEMAND FOR JURY TRIAL

1 Plaintiffs Cecilia Linares and Abel Gonzalez, by and through their attorneys, brings
 2 this action on behalf of themselves and all others similarly situated against Defendant
 3 Costco Wholesale Inc., and allege as follows:

4 **NATURE OF ACTION**

5 1. Defendant markets, sells and distributes the Kirkland Signature^{TM1}
 6 Glucosamine line of joint health dietary supplements.² Through an extensive,
 7 widespread, comprehensive and uniform nationwide marketing campaign, Defendant
 8 claims that its Kirkland Glucosamine products help improve joint mobility, rebuild
 9 cartilage and improve joint function for all joints in the human body, for adults of all ages
 10 and for all manner and stages of joint related ailments. For example, on each and every
 11 Kirkland Glucosamine Chondroitin product label and/or package, Defendant prominently
 12 states that Kirkland Glucosamine is “Clinically Proven Effective” for “optimum
 13 mobility” and “as a building block for healthy cartilage” and that “two tablets per day
 14 deliver” these benefits, as well as “nourishes JOINT and CONNECTIVE TISSUE” and
 15 “supports JOINT CUSHIONING” (hereafter referred to as the “joint renewal, mobility
 16 and rejuvenation” representations). On each and every Kirkland Glucosamine and MSM
 17 product label and/or package, Defendant makes similar joint renewal, mobility and
 18 rejuvenation claims and also promises that “noticeable improvement in flexibility and
 19 range of motion should be expected after taking this supplement as directed on a
 20 consistent basis.” However, the Kirkland Glucosamine products do not benefit or
 21 promote joint renewal, mobility and rejuvenation. Clinical cause and effect studies have
 22 found no causative link between the ingredients in the Kirkland Glucosamine products

23
 24 ¹ Kirkland SignatureTM is Costco’s store brand, also known as its “own-brand”, “house
 25 brand”, or “private label”. It is available exclusively at Costco’s website and Costco
 26 warehouses and is trademarked by the company. Kirkland SignatureTM is one of the most
 27 successful brands in the country.

28 ²The Kirkland SignatureTM Glucosamine line of joint health dietary supplements include:
 (1) Kirkland SignatureTM Extra Strength Glucosamine Chondroitin Sulfate (“Kirkland
 Glucosamine Chondroitin”); and (2) Kirkland SignatureTM Extra Strength Glucosamine
 HCL and MSM (“Kirkland Glucosamine and MSM”) (collectively, “Kirkland
 Glucosamine” or the “Products”).

1 and joint renewal, mobility and rejuvenation. Defendant also does not have competent
2 and reliable scientific evidence to support its representations. Defendant's representations
3 are false, misleading, and reasonably likely to deceive the public.

4 2. Despite the deceptive nature of Defendant's representations, Defendant
5 conveyed and continues to convey its deceptive joint renewal, mobility and rejuvenation
6 representations through a variety of media, including in its print advertisements, as well
7 as on its Product packages and labeling, website and online promotional materials. The
8 only reason a consumer would purchase the Kirkland Glucosamine products is to obtain
9 the advertised joint health benefits, which Kirkland Glucosamine does not provide.

10 3. Defendant's marketing and advertising campaign is designed to cause
11 consumers to buy Kirkland Glucosamine. Defendant's deceptive marketing and
12 advertising campaign has succeeded. Estimated sales of joint dietary supplements
13 including Kirkland Glucosamine approached \$820 million in 2006.³

14 4. Plaintiffs bring this action on behalf of themselves and other similarly
15 situated California consumers who have purchased the Products to halt the dissemination
16 of this false and misleading advertising message, correct the false and misleading
17 perception it has created in the minds of consumers, and obtain redress for those who
18 have purchased the Kirkland Glucosamine products. Plaintiffs allege violations of the
19 Consumers Legal Remedies Act, the Unfair Competition Law, and Breach of Express
20 Warranty created by Defendant's advertising, including false labeling.

21 **JURISDICTION AND VENUE**

22 5. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The
23 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
24 \$5,000,000 and is a class action in which there are in excess of 100 class members and
25 the members of the Class are citizens of a state different from Defendant.

26
27 ³ 2007 Nutrition Industry Overview, Nutrition Business J., *available at*
28 <http://newhope360.com/managing-your-business/2007-nutrition-industry-overview> (last
visited Oct. 3, 2011).

1 the joint pain in his shoulders and in so doing relied on every single one of Defendant's
2 renewal, mobility and rejuvenation representations. The Kirkland Glucosamine and
3 MSM that Plaintiff Gonzalez purchased and took as directed did not help improve joint
4 mobility, rebuild cartilage or improve joint function as represented. As a result, Plaintiff
5 Gonzalez suffered injury in fact and lost money. He would not have purchased Kirkland
6 Glucosamine and MSM had he known it did not provide the advertised joint health
7 benefits.

8 10. Defendant Costco Wholesale Inc., is a public corporation incorporated
9 under the laws of the state of Washington. Defendant's corporate headquarters is located
10 at 999 Lake Drive, Issaquah, WA 98027. Defendant distributes, markets, and sells the
11 Kirkland Glucosamine products to tens of thousands of consumers in California.

12 **FACTUAL ALLEGATIONS**

13 ***The Kirkland Glucosamine Products***

14 11. Since 2001, Costco has distributed, marketed, and sold the Kirkland
15 Signature[™] line of joint dietary supplements. These products include: (1) Kirkland
16 Signature[™] Extra Strength Glucosamine/Chondroitin Sulfate; and (2) Kirkland
17 Signature[™] Extra Strength Glucosamine HCL and MSM.

18 12. The Kirkland Glucosamine products are sold online and in Costco stores
19 statewide. The Kirkland Glucosamine and MSM product is available in 375 count
20 bottles, retailing for approximately \$18. The Kirkland Glucosamine Chondroitin product
21 is available in 220 count bottles, retailing for approximately \$25. The following are
22 screen shots of the Kirkland Glucosamine products:
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13. Since the Products' launch, Costco has consistently conveyed the message to consumers throughout California that the Kirkland Glucosamine products, with their "extra strength" formulas are clinically proven to deliver "optimum mobility" and will protect and build cartilage. Defendant's renewal, mobility and rejuvenation representations are false, misleading and deceptive.

14. Defendant represents that the claimed health benefits are achieved through the combination of ingredients in the Products. The primary active ingredient in both Kirkland Glucosamine products is glucosamine hydrochloride. Glucosamine is an amino sugar that the body produces and distributes in cartilage and other connective tissue. The Products' labeling and packaging states the benefits associated with taking glucosamine hydrochloride: "Glucosamine is a basic building block for cartilage, synovial fluid and other connective tissues, which are needed for healthy structure and function of joints." There is no competent and reliable scientific evidence that taking glucosamine—let alone through oral administration—results in the body metabolizing it into something that builds cartilage or improves joint structure or function. In fact, clinical cause and effect studies have found no causative link between glucosamine hydrochloride supplementation and joint renewal, mobility or rejuvenation.

15. The chondroitin sulfate in Kirkland Glucosamine Chondroitin, is a complex carbohydrate found in the body's connective tissues. On the Product's labeling and packaging, Defendant represents that chondroitin sulfate "protects existing cartilage and

1 serves as a building block for healthy new cartilage.” There is no competent and reliable
2 scientific evidence that taking chondroitin—let alone through oral
3 administration—results in the body metabolizing it into something that assists in building
4 joint cartilage. Clinical cause and effect studies have found no causative link between
5 chondroitin supplementation and joint renewal, mobility or rejuvenation.

6 16. The Methylsulfonylmethane (“MSM”) found in Kirkland Glucosamine and
7 MSM products is an organic sulfur compound found in fruits, corn, tomatoes, tea, coffee,
8 and milk. On the Product’s labeling and packaging, Defendant claims that MSM “is a
9 necessary component that works in conjunction with Glucosamine to provide the building
10 blocks of collagen, an important component of healthy joints and connective tissue.
11 Clinical research shows MSM increases glucosamine’s effectiveness.” There is no
12 competent and reliable scientific evidence that taking MSM—let alone through oral
13 administration—results in the body metabolizing it into something that builds cartilage or
14 improves joint structure or function, or makes glucosamine work more effectively.
15 Clinical cause and effect studies have found no causative link between MSM
16 supplementation and joint renewal, mobility or rejuvenation.

17 17. The Kirkland Glucosamine Chondroitin bottle references one study
18 purportedly supporting Defendant’s “Clinically Proven Effective” representation. Other
19 than referencing the study sponsor, no other identifying information is included. The
20 referenced NIH study is not competent and reliable scientific support for Defendant’s
21 representations. The NIH sponsored study did not examine, let alone find, that
22 glucosamine and chondroitin rebuild cartilage, nourish joint and connective tissue or
23 support joint cushioning. Defendant’s citation to this study as support for its joint
24 renewal, mobility and rejuvenation representations constitutes further deceptive and
25 misleading conduct, in as much as the study is not competent and reliable evidence of
26 efficacy.

27 18. In fact, numerous clinical cause and effect studies have found no causative
28

link between any of the primary active ingredients in the Kirkland Glucosamine products alone, or in combination, and joint renewal, mobility and rejuvenation. Nevertheless, Defendant without any scientifically valid confirmation that Kirkland Glucosamine is an effective joint treatment—let alone an effective treatment for *all* joints in the human body, for adults of *all* ages and for *all* manner and stages of joint related ailments — prominently claims on the Products’ packaging and labeling that Kirkland Glucosamine, with its “extra strength” formula, will “deliver” “optimum joint mobility”, rebuild cartilage and improve joint function. Front, back and side shots of the two Kirkland Glucosamine product labels appear as follows:

FRONT



LEFT SIDE



FRONT



LEFT SIDE



19. Defendant did not and does not have competent and reliable scientific evidence that any of the ingredients in its Kirkland Glucosamine products taken alone or in combination benefit, improve or promote joint renewal, mobility or rejuvenation. Numerous clinical studies have resulted in a finding of no efficacy for the ingredients in the Kirkland Glucosamine products and the prevention or improvement of joint degeneration or other joint ailments. Defendant's renewal and rejuvenation representations are false and misleading and reasonably likely to deceive the average consumer.

The impact of Defendant's wrongful conduct

20. Despite the lack of competent and reliable scientific evidence and numerous clinical studies that have found no causative link between the ingredients in the Kirkland Glucosamine products and joint renewal, mobility or rejuvenation, Defendant continues to unequivocally claim that its Kirkland Glucosamine products are an effective treatment for improving joint renewal, mobility and rejuvenation in all adults.

21. As the distributor of the Kirkland Glucosamine products, Defendant possesses specialized knowledge regarding the content and effects of the ingredients contained in its Kirkland Glucosamine products and is in a superior position to learn of

1 the effects—and has learned of the effects—its Products have on consumers.

2 22. Specifically, Defendant affirmatively misrepresented that the Kirkland
3 Glucosamine products, with their “extra strength formula”, are clinically proven to
4 provide “Optimum JOINT HEALTH & MOBILITY”, “Help[] Build CARTILAGE”,
5 “Nourish[] JOINT and CONNECTIVE tissue” and “Support[] JOINT CUSHIONING”.
6 Having made these affirmative misrepresentations, Defendant failed to disclose that well-
7 conducted, clinical cause-and-effect studies have found no causative relationship between
8 the product ingredients and the prevention or improvement of joint degeneration or other
9 related ailments and Defendant has no competent and reliable scientific evidence that its
10 Kirkland Glucosamine products are effective in helping provide joint renewal, mobility
11 or rejuvenation as represented.

12 23. Notwithstanding these deceptive representations and material omissions,
13 Defendant conveyed and continues to convey one uniform message: Kirkland
14 Glucosamine, with its “extra strength formula”, is clinically proven to provide “Optimum
15 JOINT HEALTH & MOBILITY”, “Help[] Build CARTILAGE”, “Nourish[] JOINT and
16 CONNECTIVE tissue” and “Support[] JOINT CUSHIONING” for all joints in the
17 human body, for adults of all ages and for all manner and stages of joint related ailments..

18 24. Plaintiffs and Class members have been and will continue to be deceived or
19 misled by Defendant’s deceptive joint renewal, mobility and rejuvenation
20 representations. Plaintiffs purchased and consumed the Products during the Class period
21 and in doing so, read and considered the Products’ label and based their decision to buy
22 the Products on the joint renewal, mobility and rejuvenation representations.
23 Defendant’s deceptive representations and omissions were a material factor in
24 influencing Plaintiffs’ decision to purchase and consume the Products. Plaintiffs would
25 not have purchased the Products had they known that Defendant’s representations were
26 false and misleading, that Defendant did not possess competent and reliable scientific
27 evidence to support its joint renewal, mobility and rejuvenation representations, and that
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1 clinical cause-and-effect studies have found no causative link between the ingredients in
2 Kirkland Glucosamine and joint renewal, mobility or rejuvenation.

3 25. As a result, Plaintiffs and the Class members have been damaged in their
4 purchases of these Products and have been deceived into purchasing Products that they
5 believed, based on Defendant's representations, were proven to be effective in improving
6 joint mobility, rebuilding cartilage and improving joint function when, in fact, they are
7 not.

8 26. Defendant, by contrast, reaped enormous profits from its false marketing
9 and sale of these Products.

10 **CLASS DEFINITION AND ALLEGATIONS**

11 27. Plaintiffs bring this action on behalf of themselves and all other similarly
12 situated California residents pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal
13 Rules of Civil Procedure and seek certification of the following Class:

14 All California residents who, within the applicable statute of
15 limitations, purchased Kirkland Signature[™] Extra Strength
16 Glucosamine Chondroitin Sulfate and/or Kirkland Signature[™]
Extra Strength Glucosamine with MSM.

17 Excluded from the Class are Defendant, its parents,
18 subsidiaries, affiliates, officers and directors, and those who
19 purchased the Kirkland Glucosamine products for the purpose
20 of resale.

21 28. Members of the Class are so numerous and geographically dispersed that
22 joinder of all Class members is impracticable. Plaintiffs are informed and believe, and
23 on that basis allege, that the proposed Class contains many thousands of members. The
24 precise number of Class members is unknown to Plaintiffs.

25 29. Common questions of law and fact exist as to all members of the Class and
26 predominate over questions affecting only individual Class members. The common legal
27 and factual questions include, but are not limited to, the following:

- 28 • Whether the claims discussed herein that Defendant made about the

1 Products were or are misleading, or reasonably likely to deceive;

- 2 • Whether Defendant's alleged conduct violates public policy;
- 3 • Whether the alleged conduct constitutes violations of the laws
- 4 asserted herein;
- 5 • Whether Defendant engaged in false and misleading advertising;
- 6 • Whether Plaintiff and Class members have sustained monetary loss
- 7 and the proper measure of that loss;
- 8 • Whether Plaintiff and Class members are entitled to restitution,
- 9 disgorgement of Defendant's profits, declaratory and/or injunctive relief; and
- 10 • Whether Plaintiff and Class members are entitled to an award of
- 11 compensatory and/or punitive damages.

12 30. Plaintiff's claims are typical of the claims of the members of the Class
13 because, *inter alia*, all Class members were injured through the uniform misconduct
14 described above, were subject to Defendant's deceptive joint renewal, mobility and
15 rejuvenation representations accompanying each and every bottle of the Kirkland
16 Glucosamine products which include the same primary active ingredient – glucosamine
17 hydrochloride. Plaintiff is advancing the same claims and legal theories on behalf of
18 herself and all members of the Class.

19 31. Plaintiff will fairly and adequately represent and protect the interests of the
20 members of the Class. Plaintiff has retained counsel competent and experienced in both
21 consumer protection and class litigation.

22 32. A class action is superior to other available methods for the fair and
23 efficient adjudication of this controversy. The expense and burden of individual
24 litigation would make it impracticable or impossible for proposed Class members to
25 prosecute their claims individually. It would thus be virtually impossible for the Class,
26 on an individual basis, to obtain effective redress for the wrongs done to them.
27 Furthermore, even if Class members could afford such individualized litigation, the court
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1 system could not. Individualized litigation would create the danger of inconsistent or
2 contradictory judgments arising from the same set of facts. Individualized litigation
3 would also increase the delay and expense to all parties and the court system from the
4 issues raised by this action. By contrast, the class action device provides the benefits of
5 adjudication of these issues in a single proceeding, economies of scale, and
6 comprehensive supervision by a single court, and presents no unusual management
7 difficulties under the circumstances here.

8 33. In the alternative, the Class also may be certified because Defendant has
9 acted or refused to act on grounds generally applicable to the Class thereby making
10 appropriate final declaratory and/or injunctive relief with respect to the members of the
11 Class as a whole.

12 34. Plaintiff seeks preliminary and permanent injunctive and equitable relief on
13 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin
14 and prevent Defendant from engaging in the acts described, and requiring Defendant to
15 provide full restitution to Plaintiff and Class members.

16 35. Unless a Class is certified, Defendant will retain monies received as a result
17 of its conduct that were taken from Plaintiff and Class members. Unless a Class-wide
18 injunction is issued, Defendant will continue to commit the violations alleged, and the
19 members of the Class and the general public will continue to be misled.

20 **COUNT I**
21 **Violation of Business & Professions Code §17200, *et seq.***

22 36. Plaintiff repeats and re-alleges the allegations contained in the paragraphs
23 above, as if fully set forth herein.

24 37. Plaintiff Cecilia Linares brings this claim individually and on behalf of the
25 Class.

26 38. As alleged herein, Plaintiff has suffered injury in fact and lost money or
27 property as a result of Defendant's conduct because she purchased Kirkland Glucosamine
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1 in reliance on Defendant's joint renewal, mobility and rejuvenation representations
2 detailed above, but did not receive a product that provides joint renewal, mobility or
3 rejuvenation.

4 39. The Unfair Competition Law, Business & Professions Code §17200, *et seq.*
5 ("UCL"), prohibits any "unlawful," "fraudulent" or "unfair" business act or practice and
6 any false or misleading advertising. In the course of conducting business, Defendant
7 committed unlawful business practices by, *inter alia*, making the representations (which
8 also constitutes advertising within the meaning of §17200) and omissions of material
9 facts, as set forth more fully herein, and violating Civil Code §§1572, 1573, 1709, 1711,
10 1770 and Business & Professions Code §§17200, *et seq.*, 17500, *et seq.*, and the common
11 law.

12 40. Plaintiff and the Class reserve the right to allege other violations of law,
13 which constitute other unlawful business acts or practices. Such conduct is ongoing and
14 continues to this date.

15 41. Defendant's actions also constitute "unfair" business acts or practices
16 because, as alleged above, *inter alia*, Defendant engaged in false advertising,
17 misrepresented and omitted material facts regarding its Kirkland Glucosamine labels and
18 packaging, and thereby offended an established public policy, and engaged in immoral,
19 unethical, oppressive, and unscrupulous activities that are substantially injurious to
20 consumers.

21 42. As stated in this Complaint, Plaintiff alleges violations of consumer
22 protection, unfair competition and truth in advertising laws, resulting in harm to
23 consumers. Defendant's acts and omissions also violate and offend the public policy
24 against engaging in false and misleading advertising, unfair competition and deceptive
25 conduct towards consumers. This conduct constitutes violations of the unfair prong of
26 Business & Professions Code §17200, *et seq.*

27 43. There were reasonably available alternatives to further Defendant's
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1 legitimate business interests, other than the conduct described herein.

2 44. Business & Professions Code §17200, *et seq.*, also prohibits any
3 “fraudulent business act or practice.”

4 45. Defendant’s actions, claims, nondisclosures and misleading statements, as
5 more fully set forth above, were also false, misleading and/or likely to deceive the
6 consuming public within the meaning of Business & Professions Code §17200, *et seq.*

7 46. Plaintiff and other members of the Class have in fact been deceived as a
8 result of their reliance on Defendant’s material representations and omissions, which are
9 described above. This reliance has caused harm to Plaintiff and other members of the
10 Class who each purchased Defendant’s Kirkland Glucosamine products. Plaintiff and the
11 other Class members have suffered injury in fact and lost money as a result of these
12 unlawful, unfair, and fraudulent practices.

13 47. As a result of its deception, Defendant has been able to reap unjust revenue
14 and profit.

15 48. Unless restrained and enjoined, Defendant will continue to engage in the
16 above-described conduct. Accordingly, injunctive relief is appropriate.

17 49. Plaintiff, on behalf of herself and all others similarly situated, and the
18 general public, seeks restitution and disgorgement of all money obtained from Plaintiff
19 and the members of the Class collected as a result of unfair competition, an injunction
20 prohibiting Defendant from continuing such practices, corrective advertising and all other
21 relief this Court deems appropriate, consistent with Business & Professions Code
22 §17203.

23 **COUNT II**

Violation of the Consumers Legal Remedies Act –Civil Code §1750 *et seq.*

24 50. Plaintiff re-alleges and incorporates by reference the allegations contained
25 in the paragraphs above as if fully set forth herein.

26 51. Plaintiff Cecilia Linares brings this claim individually and on behalf of the
27 Class.
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52. This cause of action is brought under the Consumers Legal Remedies Act, California Civil Code §1750, et seq. (the “Act”). Plaintiff is a consumer as defined by California Civil Code §1761(d). Defendant’s Kirkland Glucosamine products are goods within the meaning of the Act.

53. Defendant violated and continues to violate the Act by engaging in the following practices proscribed by California Civil Code §1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of Defendant’s Kirkland Glucosamine products:

(5) Representing that [the Kirkland Glucosamine products have] . . . characteristics, . . . uses [or] benefits . . . which [they] do not have.

* * *

(7) Representing that [the Kirkland Glucosamine products are] of a particular standard, quality or grade, . . . if [they are] of another.

* * *

(9) Advertising goods . . . with the intent not to sell them as advertised.

* * *

(16) Representing that [the Kirkland Glucosamine products have] been supplied in accordance with a previous representation when [they have] not.

54. Defendant violated the Act by representing and failing to disclose material facts on the Kirkland Glucosamine product labels and packaging, as described above, when it knew, or should have known, that the representations were unsubstantiated, were contrary to several clinical cause and effect studies finding the ingredients in all Kirkland Glucosamine products to be inefficacious, were false and misleading and that the omissions were of material facts they were obligated to disclose.

55. Pursuant to §1782(d) of the Act, Plaintiff and the Class seek a court order enjoining the above-described wrongful acts and practices of Defendant and for restitution and disgorgement.

1 benefits described above which was the only reason Plaintiff and Class members
2 purchased the Kirkland Glucosamine products.

3 64. As a result of Defendant's breach of its warranty, Plaintiff and Class
4 members have been damaged in the amount of the purchase price of the Kirkland
5 Glucosamine products they purchased.

6 **PRAYER FOR RELIEF**

7 Wherefore, Plaintiff prays for a judgment:

- 8 A. Certifying the class as requested herein;
9 B. Awarding Plaintiff and the proposed Class members damages;
10 C. Awarding restitution and disgorgement of Defendant's revenues to Plaintiff
11 and the proposed Class members;
12 D. Awarding declaratory and injunctive relief as permitted by law or equity,
13 including enjoining Defendant from continuing the unlawful practices as set
14 forth herein, and directing Defendant to identify, with court supervision,
15 victims of its conduct and pay them restitution and disgorgement of all
16 monies acquired by Defendant by means of any act or practice declared by
17 this Court to be wrongful;
18 E. Ordering Defendant to engage in a corrective advertising campaign;
19 F. Awarding attorneys' fees and costs; and
20 G. Providing such further relief as may be just and proper.

21 **JURY DEMAND**

22 Plaintiffs demand a trial by jury on all issues so triable.

23 DATED: April 25, 2012

BONNETT FAIRBOURN FRIEDMAN
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CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record denoted on the Court's Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 25, 2012.

By: s/ Todd D. Carpenter

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